



Undisputed Material Fact	Evidentiary Source
On March 6, 2015, Plaintiff opened a credit card account with Defendant.	Declaration of Plaintiff Leonela Aracely Valdez Herrera (hereinafter “Valdez Declaration”), Exhibit “A” at ¶ 2; Defendant’s collection system record produced in discovery, Exhibit “B” at p. 1 (confidential information redacted).
In her application for the credit card account, Plaintiff provided her cellular phone number ending in -6948 as a primary contact number, and her work telephone number ending in -2888 as a secondary contact number.	Valdez Declaration, Exhibit “A” at ¶ 3, system record, Exhibit “B” at p. 1.; Deposition of Leonela Aracely Valdez Herrera, (hereinafter “Valdez Deposition”), Exhibit “C” at p. 11, ¶¶ 9-25, p. 12, ¶ 1.
No other telephone numbers were submitted by Plaintiff to Defendant.	Valdez Declaration, Exhibit “A” at ¶ 3, system record, Exhibit “B” at p. 1., Valdez Deposition, Exhibit “C” at p. 11, ¶¶ 9-25, p. 12, ¶ 1.
The cellular phone number ending in -6948 is associated with a T-Mobile account that has belonged exclusively to Plaintiff since 2011.	Valdez Declaration, Exhibit “A” at ¶ 4; Valdez Deposition, Exhibit “C” at p. 6, ¶¶ 5-14; T-Mobile Response to Subpoena Request, Exhibit “D” (confidential information redacted).

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In 2016, Plaintiff became unable to make scheduled payments on the account.	Valdez Declaration, Exhibit “A” at ¶ 5; Valdez Deposition, Exhibit “C” at p. 15, ¶¶ 18-25.
In response, Defendant began placing collection calls to Plaintiff in an attempt to collect past due payments.	Valdez Declaration, Exhibit “A” at ¶ 6; Valdez Deposition, Exhibit “C” at p. 12 ¶¶ 17-25, p. 13, ¶ 1; collection communication record produced in discovery (hereinafter “communication record”) attached hereto as Exhibit “E.”
Defendant utilizes the Avaya Proactive Contact 5.1 computer dialing system to place collection calls.	Transcript of Deposition of Defendant’s FRCP 30b(6) Corporate Representative Scot Mayo (hereinafter “Mayo deposition”) attached hereto as Exhibit “F” at p. 8, ¶¶ 14-24.
Each day, Defendant runs a sweep of its accounts to identify delinquent accounts and contact phone numbers associated with those accounts, which are then compiled into a list and queued into the Avaya system.	Mayo Deposition, Exhibit “F” at p. 10, ¶¶ 6-14.

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A collections manager thereafter initiates the dialing campaign, and the computer system begins dialing the phone numbers which had previously been queued.	Mayo Deposition, Exhibit “F” at p. 11, ¶¶ 1-16.
Once the call is dialed, the call is thereafter transferred to a collection agent.	Mayo Deposition, Exhibit “F” at p. 24, ¶¶ 1-12.
On January 4, 2017 at approximately 7:17 p.m., Defendant placed a collection call to Plaintiff’s cellular phone, which was answered by Plaintiff.	Valdez Declaration, Exhibit “A” at ¶ 7; Valdez Deposition, Exhibit “C” at p. 13, ¶¶ 2-9; Communication Record, Exhibit “E” at 3.
In the course of the collection call on January 4, 2017, Plaintiff requested that Defendant stop calling.	Valdez Declaration, Exhibit “A” at ¶ 8, Valdez Deposition, Exhibit “C” at p. 13, ¶¶ 10-25, p. 11, ¶ 1; Recording of January 4, 2017 call produced in discovery attached hereto as Exhibit “G.”
The full transcript of the call is as follows: Agent: “Hello?” Plaintiff: “Hello?” gent: “Hi, this is Jodi with First National Bank of Omaha on a recorded line. I’d like to speak with Leonela Valdez?” Plaintiff: “Stop calling me.”	Call recording, Exhibit “G.”

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Immediately following the termination of the call, Defendant's collection agent manually typed a note regarding the call in Defendant's collection system, which stated "GAL ANSWERED AND SD STOP CALLING ME."	Communication record, Exhibit "E" at p. 3, Mayo Deposition, Exhibit "F" at p. 20, ¶¶ 12-15.
Despite Plaintiff's clear request to cease calling, Defendant continued to place calls to Plaintiff's cellular telephone between January 5, 2017 and February 3, 2017.	Valdez Declaration, Exhibit "A" at ¶ 9; Valdez Deposition, Exhibit "C" at p. 14, ¶¶ 21-25, p. 15, ¶¶ 1-2; Communication record, Exhibit "E" at 3-4.
Defendant used the Avaya Proactive Contact 5.1 system to place each call between January 5, 2017 and February 3, 2017.	Communication record, Exhibit "E" at 3-4; Mayo Deposition, Exhibit "F" at p. 22, ¶¶ 13-24.

Date: October 31, 2017

RESPECTFULLY SUBMITTED,

By: /s/ Matthew A. Rosenthal  
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